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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RAYMOND WARE,)	CIVIL NO. 04-00671 HG LEK
)	
Plaintiff,)	FEDERAL DEFENDANTS' RESPONSES
)	TO PLAINTIFF'S FOURTH REQUEST
v.)	FOR PRODUCTION OF DOCUMENTS
)	
SIDNEY HAYAKAWA, Director of)	
Transportation Security)	
Administration - Honolulu,)	
KEN KAMAHELE, Deputy)	
Director, TRANSPORTATION)	
SECURITY ADMINISTRATION;)	
MICHAEL CHERTOFF, Secretary,)	
Department of Homeland)	
Security, DEPARTMENT OF)	
HOMELAND SECURITY; JOHN DOES)	
1-5,)	
Defendants.)	
)	

FEDERAL DEFENDANTS' RESPONSES TO PLAINTIFF'S
FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW federal defendants, Sidney Hayakawa, Director of Transportation Security Administration - Honolulu, Ken Kamahele, Deputy Director, Transportation Security Administration

- Honolulu, Transportation Security Administration, and Michael Chertoff, Secretary, Department of Homeland Security, and responds to Plaintiff's Fourth Request for Production of Documents as follows:

1. Copy of TSA Management Directive No. 1900.4, FY03-04 Annual Proficiency Review.

RESPONSE:

Both the Management Directive and the portion of plaintiff's Annual Proficiency Review that are not protected by the Sensitive Security Information (SSI) regulations have already been produced. To the extent this request seeks other documents, defendants object that the request is vague, that the documents sought may be protected by the Privacy Act or SSI regulations, and that the request is not reasonably calculated to lead to the discovery of admissible evidence.

2. Proof that the testers for Module 3 of this certification test were properly certified.

RESPONSE:

Defendants do not have any documents responsive to this request. TSA entered into a contract with Lockheed Martin, who, through subcontractors, fulfilled their obligation to administer module 3 in 2003.

3. Any studies and/or verification that Module 3 of the certification test administered to Plaintiff was validated and a proper test for the position in question and consistent with business necessity.

RESPONSE:

Defendants do not have any responsive documents because the nature of the Module 3 process does not require any verification or validation. Module 3 is a work sample test, in which the screeners are asked to demonstrate what they are actually doing on the job pursuant to the Standard Operating Procedure (SOP). The SOP itself is protected by SSI regulations.



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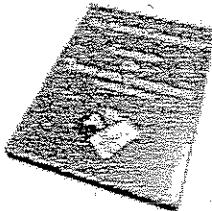
Airport screeners slam TSA recertification program



"Basically, the testing is a complete joke," Clawson said. "I think they adjusted the tests because so many people were failing, and they knew that they couldn't lose their screener force."

She said low pay and bad hours are reasons the agency has been unable to keep part-time workers. She added that recent interviews revealed 11 of the 15 busiest airports do not have enough screeners.

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"Basically, the testing is a complete joke," Clawson said. "I think they adjusted the tests because so many people were failing, and they knew that they couldn't lose their screener force."

She said low pay and bad hours are reasons the agency has been unable to keep part-time workers. She added that recent interviews revealed 11 of the 15 busiest airports do not have enough screeners.

February 18, 2004

Airport screeners slam TSA recertification program

By Chris Strohm
cstrohm@govexec.com

As an experienced passenger and baggage screener at Orlando International Airport, Repeta Clawson recognizes odd activity. While her attention is usually focused on passengers waiting to board planes, suspicions have turned to an internal matter: the Transportation Security Administration's annual recertification program for airport screeners.

Clawson, along with several screeners at other airports around the country, say the recertification is in so many problems that it should be scrapped.

Through interviews, e-mail exchanges and documents, TSA screeners paint a picture of a testing regime based more on subjective criteria than TSA standard operating procedures, leading to confusion on whether airport safety is being compromised. Most of the screeners contacted by Government Executive are anonymous for fear of retaliation.

Screeners said a high number of workers failed the first time they took the recertification test, but not the second time because TSA is watering down its testing standards. Screeners who fail testing twice are supposed to be automatically fired.

For example, a screener at New York's LaGuardia International Airport said 62 out of 122 screeners failed the recertification test for the first time by early February. Failed. On Feb. 4 alone, 24 screeners took the test and failed. A screener at John F. Kennedy International Airport outside New York City said 10 out of 15 who took the test with for the first time failed, including him.

"Basically, the testing is a complete joke," Clawson said. "I think they adjusted the tests because so many people were failing, and they knew that they couldn't lose their screener force."

TSA spokesman Darrin Kayser challenged those claims, asserting that 99.5 percent of all passenger screeners passed the recertification test either on the first or second try. He said the claim that the use of subjective standards is "untrue" and "defies logic" given that less than 1 percent of screeners failed.

The Testing Regime

TSA was handed responsibility for training and maintaining a passenger and baggage screening workforce at the nation's 429 commercial airports after the Sept. 11 terrorist attacks. The agency established an annual program to ensure that screeners met all qualifications and standards for their jobs.

As part of the recertification program, screeners are given a knowledge and skills assessment that has three phases: knowledge of standard operating procedures, image recognition and a practical demonstration.

TSA administered the first two phases, but hired Lockheed Martin to conduct the third-phase test, which gives screeners the most problems. Under its contract, Lockheed Martin developed and implemented a test for phase three, and is conducting and evaluating the practical demonstration tests. The tests evaluate customer service skills and procedures, such as waving a hand wand over a passenger, checking a passenger down and performing an explosive trace detection check.

Lockheed has a deadline of March 31 to complete the certification of all screeners, according to a Lockheed official. He said company testers have completed TSA screener training classes and are qualified to evaluate them.

The Lockheed official declined to comment on the national pass and fail rates for screeners or the complaints raised by screeners.

Testing Problems

Both Lockheed and TSA said screeners are being evaluated based on TSA's objective standard operating procedures.

Screeners, however, said subjective standards permeate their workplace. In some cases, Lockheed screeners say they should perform tasks that do not adhere to standard operating procedures. In other cases, supervisors have told screeners to disregard standard procedures on a daily basis, which has created complaints from screeners. And, in still other cases, trainers and testers have different interpretations of the procedures.

"We are getting information from four different sources and none of them match up," said one screener. "It's the test the first time he took it."

Screeners rattle off numerous examples of testing discrepancies they say are the result of subjective standards.

For example, a screener at LaGuardia said Lockheed personnel told her during testing that she should not suspicious bags when X-ray machines or explosive trace detection equipment are not working.

Screeners, however, said that standard operating procedures dictate that they leave suspicious bags with a supervisor or, if necessary, the police when detection machines are not working.

"You're telling my people to open something up that might be a bomb," said Bob Marchetta, acting president of the New York Metropolitan Airport Workers Association, which was created last year to represent airport workers. "That behavior is going to kill American people. This is totally horrendous behavior."

A screener at Kennedy airport said he failed the phase-three test, but passed the second time. The screener was let down, he said, and the Lockheed tester appeared to be more interested in the words he was communicating with passengers than his actual screening techniques.

"Some people think they did worse on the second test, but they still passed," he said. "If they hired people who was failing, they wouldn't have a workforce. They can't do that."

Another screener passed the recertification test on his second try even though he waved an electric device over a passenger who pretended to have an implanted heart pacer, which is a violation of standard operating procedures.

"We're not saying that Lockheed Martin was not prepared for this; we're saying that they are ill-prepared for testing," Marchetta said. "At this point, we believe Lockheed Martin is just lip-synching their way through contract money."

Still another screener said she was notified within hours of taking her test that she had failed, even though requirements say all test results must be sent to Washington for certification, which takes 45 hours. Screeners charge that TSA managers are selectively firing certain workers, such as screeners who file discrimination complaints, are involved in union organizing or have a medical condition, such as pre-

And several screeners said they have not received proper training for the recertification tests, which law. The General Accounting Office found in a Feb. 12 report that TSA has taken steps to enhance programs for screeners, but problems still remain.

"While TSA has begun developing and fielding recurrent training modules, staffing shortages and a speed connectivity at airports have made it difficult for all screeners to access these courses," the report said.

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Some screeners said they are starting to look for new employment, given past problems they've experienced at the agency as well as recent troubles with the training recertification program.

At a House hearing last week, Cathleen Berrick, director of GAO's homeland security and justice division, said turnover at TSA averages 14 percent annually, but ranges as high as 36 percent at some large airports. Pay and bad hours are reasons the agency has been unable to keep part-time workers. She added interviews revealed 11 of the 15 busiest airports do not have enough screeners.

"TSA continues to struggle to maintain an adequate number of screeners at airport checkpoints, and achieved a stable screener workforce," she said. Berrick added that TSA's hiring process "has hindered some [federal security directors] to adequately staff passenger and baggage screening checkpoints. Interviewees expressed concern that TSA's hiring process was not responsive to their needs, and we more input in the hiring process. These PSDs faced screener shortages that hindered their screening

Gawson, who once qualified to be a screening supervisor, said she is seriously considering looking and her co-workers are frustrated, angry and becoming indifferent toward the problems at their air

"I will tell you that when I leave here I will not fly again until something is fixed," she said. "I want accountable for what's going on. The only reason I took this job is because I thought it was going from other government agencies and I thought that we would have a government agency that was and responsible, and that hasn't happened."

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Posted by tom may on Monday, February 23, 2004 - 04:33 PM

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DAILY BRIEFING

November 2, 2004

Airport screeners allege discrimination in recertification tests

By Chris Strohm
cstrohm@govexec.com

An organization representing airport screeners is alleging that recertification tests discriminate against workers with medical disabilities and should be suspended until necessary modifications are made.

The recertification tests discriminate against screeners based on their age, race or disability, according to a complaint filed last week with the Justice Department by the Metropolitan Airport Workers Association, which is based in New York, but represents screeners nationwide. The complaint was filed against the Transportation Security Administration and two contractors.

In a statement Monday, TSA said that screeners must be medically and physically able to perform their duties. The agency has required screeners to meet validated medicals since March 2002, when the federal screener workforce was created



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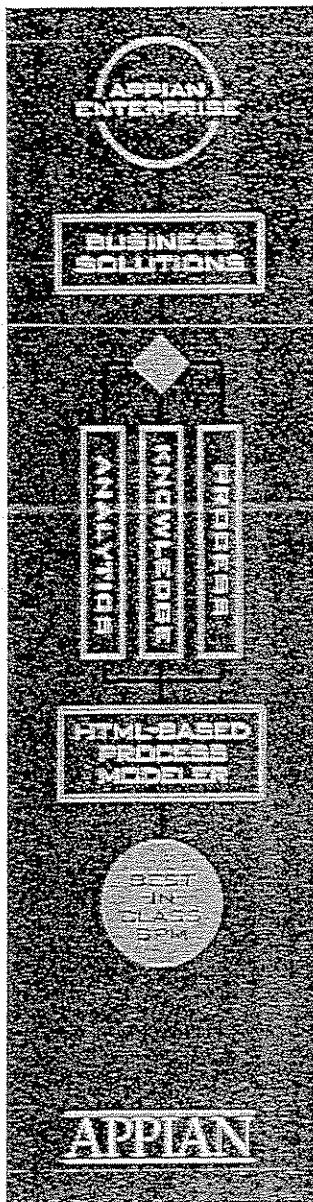
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"All screeners had to meet these standards upon hire and are required to meet those standards in order to safely perform the critical tasks of the screener position," TSA said.

The recertification program runs until June and has three test modules. In the program, screeners must prove their proficiency using X-ray machines, using and explosive detection machines, and performing a physical demonstration of passenger and baggage screening skills. TSA recently signed a contract with Lockheed Martin for \$20 million to conduct the physical evaluation of screeners' skills.

Confusion exists, however, over how medical information is used in the recertification program.

TSA said it is developing a new module for the recertification program that will specifically evaluate the ability of screeners to meet medical standards. The new module is not in place yet because the agency hasn't received the funds to implement it.

"TSA has been working on adding a module to the recertification test that will require screeners to meet the medical standards for the position," TSA said. "The new module will require contractor support, thus we will need to identify funding."

The handbook for this year's recertification program, however, includes a section called "Medical Standards Evaluation." Portions of the handbook that medical information factors into the recertification program are used to determine, in part, whether screeners pass or fail.

"For FY 04-05, screeners will be asked to complete a medical questionnaire and get further assessment if their medical condition requires additional evaluation," the handbook states.

The "Frequently Asked Questions" section of the handbook states that medical standards evaluation is involved in the recertification process. A flow chart indicates that a medical standards evaluation is a component of the recertification program. According to the chart, if a screener passes all modules and receives a rating of acceptable or above on his or her performance assessment but does not meet the screener medical standards because of a medical condition that is permanent, then the screener is removed from employment.

Bob Marchetta, MAWA's director of administration, claimed the n

portion of the tests violate up to four federal laws, including the 1990 Americans with Disabilities Act and the 1974 Privacy Act.

MAWA's complaint alleges that TSA and Lockheed Martin are discriminating against screeners by administering the tests. MAWA meeting with officials from the federal agency and Lockheed Mart criteria for the tests.

In the complaint, MAWA says that screeners who have been suspended based on the medical portion of the tests should be immediately reinstated.

Lockheed Martin spokeswoman Jeanine Zeitvogel said the company "received official notification about this complaint, so we have not about it at this time nor can we speculate on the content."

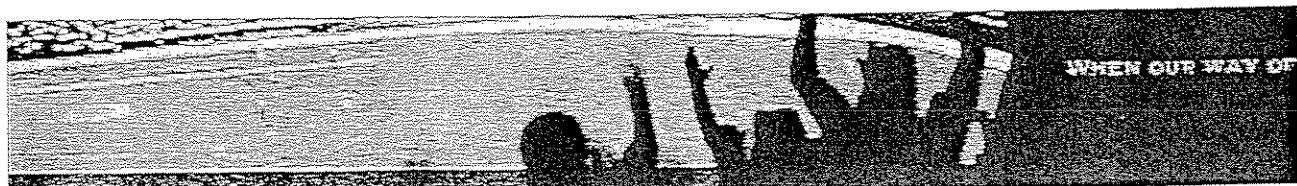
In some cases, Marchetta said, the recertification tests do not make accommodations for screeners with medical disabilities.

"You might have a problem in a certain area where you need certain accommodations," he said. "To not have this means you run the risk of performing poorly and being fired."

MAWA also filed eight complaints during the past two weeks with Office of Civil Rights over the recertification tests, Marchetta added.

TSA said it is in compliance with appropriate laws. "Also, to the extent possible, we make adjustments for screeners who are temporarily ill," the agency said. "We review each individual situation, taking certain factors into consideration, such as the prognosis for recovery, whether the screener or will be, able to effectively perform the full range of screener duties without compromising security, and the operational feasibility of any accommodation."

"If a screener cannot perform all necessary security screening functions whether due to a medical condition or for some other reason, such substandard performance, we cannot retain that individual as a screener," agency statement added. "Whether that individual can be employed in the agency generally depends on factors such as TSA's operations and the availability of vacant positions for which the individual is qualified."



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DAILY BRIEFING

October 18, 2004

TSA revamps annual screener recertification tests

By Chris Strohm
cstrohm@govexec.com

The Transportation Security Administration is testing and recertifying its workforce of about 45,000 airport passenger and baggage screeners.

The second annual screener recertification program began last month and will run through June 2005, according to Peter Marcello, TSA's recertification program manager. Under the program, screeners must prove their proficiency using X-ray and explosive detection machines, and perform a physical demonstration of passenger and baggage screening skills.

The agency spent months retooling the recertification program to avoid problems that plagued the first annual tests, which wrapped up in May, said Elizabeth Kolmstetter, TSA's acting assistant administrator for workforce performance and training.



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MSNBC - TSA Has Fired 112 Honolulu Employees Since 2002

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TSA Has Fired 112 Honolulu Employees Since 2002

KITV-TV

HONOLULU - The Transportation Security Administration has fired 112 of its Honolulu employees for misconduct and other offenses since the agency began operating in Hawaii in April 2002, KITV has learned. That's roughly 17 percent of its workforce terminated for cause. KITV's investigation found Hawaii TSA screeners were fired for sleeping on the job, being drunk or high at work and abandoning their posts.

TSA's Honolulu office has a high percentage of firings compared to other stressful workplaces, such as the Honolulu Police Department.

Since 2002, four Honolulu TSA employees have been fired for sleeping on duty, another five were let go for being drunk at work and six others were terminated for failing drug tests.

"We don't want our screeners to be acting inappropriately, because we are in a position of public trust and if we violate that trust, then we're not doing our job," TSA spokesman Nico Melendez said.

HONOLULU TSA FIRING REASONS	Description	No. Of Workers Fired
15 Failed Certification	Attendance	20
14 Absent Without Leave/		
13 Abandonment		
10 Misconduct		
6 Failed Drug Test		
5 Under Influence of Alcohol		
5 Sleeping on Duty		
4 Excessive Leave		
3 Failure to Follow Procedures		
3 Time Sheet Falsification/Attendance		
3 Unsatisfactory Performance		
2 Inappropriate Behavior		
2 Security Breach		
1 Improper Security Procedures		
1 Felony Involving Assault		
1 Failure to Follow Security Measures		
1 Took Prohibited Item		
1 Sexual Harassment		
1 Sexual Misconduct		
1 Improper Screening Procedures		
1 Security Background Check		
1 No Show For Exam		
1 Failed Training		

Fifteen TSA employees in Hawaii were fired for problems with attendance, while another 13 were terminated because they abandoned their posts or were absent without leave. Three others were let go for falsifying time sheets.

"We will research and investigate each claim fully and take steps when necessary because we expect our screeners to live up to a higher standard than anyone else," Melendez said.

One TSA screener was fired for a security breach, while another was let go for improper security procedures, still another for improper security screening and another for felony assault.

"We have good men and women who are dedicated to the security of aviation and to the security of the transportation system, and I think we need to recognize that we have more good people working for us than we do bad," Melendez said.

Because of employee privacy rules, the TSA would not release specifics of the cases.

"They're working weird shifts, they're working long hours and working under extreme conditions and working under conditions, where they have to deal with passengers that sometimes are not too friendly," Melendez said.

MSNBC - TSA Has Fired 112 Honolulu Employees Since 2002

HONOLULU TSA FIRINGS Year No. Of Workers Fired 2002 7 2003 60 2004 33 2005 12

The TSA said the number of Honolulu TSA employees fired has decreased since a high of 60 in 2003 -- its first full year of operation. Thirty-three were fired in 2004 and just 12 were terminated last year. That works out to the TSA firing about 17 percent of its 630 employees over the last few years.

That's a much higher percentage than at the Honolulu Police Department, which also provides 24-hour service to the public in often-stressful situations. Just eight HPD employees were fired in the last three years out of nearly 2,800. That's a tiny fraction of 1 percent.

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TheHawaiiChannel

Airport Whistleblower Says TSA Retaliating Against Him

TSA Directors Says Employee Involved In Personnel Investigation

POSTED: 7:18 am HST June 29, 2005

UPDATED: 10:39 am HST June 29, 2005

HONOLULU -- The man who blew the whistle on safety problems at Honolulu International Airport told KITV 4 News that the Transportation Safety Agency is retaliating against him.

Complaints forced TSA at the airport to stop the unsafe storage of hundreds of pounds of flammable materials like cigarette lighters seized at airport checkpoints.

Robert Cravens fears that he will be fired by the Transportation Security Administration for bringing to light safety problems at the airport, so he decided to talk to KITV 4 News.

Cravens, 52, was a property clerk who inventoried thousands of banned items seized or surrendered at Honolulu International Airport. He said TSA had no plan to store hundreds of pounds of cigarette lighters seized since April -- along with other flammables, like matches, fireworks; paint and paint thinner.

So huge quantities of the stuff were being kept just steps away from the TSA operations center and an employee break room.

"It's just elementary hazmat 101 -- that you could possibly have an explosion," Cravens said. Starting June 1, he said he complained verbally and in writing about the situation. He lodged 12 complaints.

"I was complaining, complaining, complaining and they took no action," Cravens said. So he went outside the TSA to the U.S. Labor Department, the State Health Department and others. They inspected the site, found unsafe conditions and recommended changes that TSA made in the last week.

Cravens said in the middle of last month, after he'd been complaining for two weeks, managers transferred him to another job and cut his hours drastically.

"This comes under retaliatory tactics and it's unacceptable," Cravens said. He said his work schedule was reduced from 30 or more hours a week down to 18 hours. Because of the drop in hours he lost his medical benefits.

"And they cut my days down to four hours a day. It's just blatant retaliation," Cravens said. Sidney Hayakawa, who oversees TSA operations in Honolulu, said Cravens "has not been re-assigned because of what he said. We are investigating him because of an allegation of harassment against him by another employee."

"The totally false, outrageous allegations are that I harassed an employee and threatened an employee and that I falsified property clerk documents," Cravens said.

Cravens said he lodged a similar complaint against a female co-worker in the property clerk's office and believes she turned around and filed the same complaint against him.

Hayakawa said he transferred Cravens to separate the two employees with the conflict, as is called for in TSA personnel regulations.



Video



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Previous Story:

- June 28, 2005: Confiscated Lighters Create Safety Problems At Airport

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